

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RICHARD EDVALDS,

Petitioner,

V.

DOUG COLE,..

Respondent.

CASE NO. C11-5589-BHS-JRC

REPORT AND RECOMMENDATION

NOTED FOR :
NOVEMBER 18, 2011

This petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 has been referred to United States Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b) (1) (A) and (B), and local Magistrate Judge Rules MJR3 and MJR4. The Court recommends that petitioner's motion to proceed in forma pauperis be denied and petitioner be given thirty days to pay the five dollar filing fee. If the fee is not paid the action should be dismissed by Court order.

1 On July 29, 2011, the Clerk's Office sent petitioner a deficiency letter
2 informing him the Court needed the correct application or form for proceeding in
3 forma pauperis, a complete petition, and service copies of the petition (ECF No. 2).
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5 Petitioner filed two motions for an extension of time (ECF NO. 3 and 4). He
6 also provided two service copies of a complete petition, but no form to proceed in
7 forma pauperis.

8 An Order granting an extension of time until October 21, 2011 was entered
9 on September 7, 2011(ECF No. 5). As of October 26, 2011, the Court has not
10 received the correct application or form to proceed in forma pauperis.
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12 The right to proceed in forma pauperis is not absolute and denial of in forma
13 pauperis status is reviewed for abuse of discretion. Denardo v. Collum, 48 F.3d
14 1227 (9th Cir. 1995). Further, the Ninth Circuit addressed the denial of in forma
15 pauperis status over forty years ago and held that proceeding in forma pauperis is a
16 matter within the sound discretion of the trial court in civil actions. Weller v.
17 Dickson, 314 F.2d 598 (9th Cir. 1963). Here, petitioner has failed to file the form
18 needed to determine if he is entitled to proceed in forma pauperis. He has been
19 given ample time to comply with the Clerk's letter. The motion to proceed in
20 forma pauperis should be denied.
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1 Petitioner should be given thirty days to pay the full five dollar filing fee.

2 Failure to pay that fee should result in immediate dismissal of this petition by
3 Court Order.

4 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall
5 have fourteen (14) days from service of this Report to file written objections. See
6 also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those
7 objections for purposes of de novo review by the district judge. See 28 U.S.C. §
8 636(b)(1)(C). Accommodating the time limit imposed by Fed. R. Civ. P. 72(b), the
9 clerk is directed to set the matter for consideration on November 18, 2011, as noted
10 in the caption.

11 Dated this 27th day of October, 2011.
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16 J. Richard Creatura
United States Magistrate Judge
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